MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
NOVEMBER 28, 2005

The regular meeting of the Greensboro Board of Adjustment was held on Monday, November 28, 2005 in the City Council Chamber of the Melvin Municipal Office Building, commencing at 2:00 p.m. The following were present: Chair Hugh Holston, Sandra Anderson, Ann Buffington, John Cross, Jim Kee, Russ Parmele and Rick Pinto. Bill Ruska, Zoning Administrator, Zoning Enforcement Officer Barry Levine, and Blair Carr, Esq., from the City Attorney's Office, were also present.

Chair Holston called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. Chair Holston also advised that each side, regardless of the number of speakers would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Cross moved approval of the October 24, 2005 minutes as written, seconded by Ms. Buffington. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Pinto. Nays: None.)

Mr. Ruska was sworn or affirmed as to all testimony given by him today.

Mr. Ruska introduced a new Zoning Enforcement Officer, Jeff McClintock, who had been with the City for two weeks.

CHANGES IN AGENDA

Mr. Ruska said there has been one withdrawal from the agenda, BOA-05-38, 801 Merritt Drive, the first item on the agenda. A site plan was approved by the Technical Review Committee (TRC) for the sales of the camper vehicles on this site last week and, therefore, the violation has been cured and there is no reason to proceed with this item.

OLD BUSINESS

APPEAL OF NOTICE OF VIOLATION

(A) BOA-05-38: 801 MERRITT DRIVE - CARL JOHNSON APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE USE OF THE PROPERTY FOR RECREATIONAL VEHICLE SALES. THE APPROVED UNIFIED DEVELOPMENT PLAN DID NOT INDICATE THE SALE OF RECREATIONAL VEHICLES AS AN APPROVED USE ON THIS PROPERTY AND THE APPROVAL PERIOD FOR THIS PLAN HAS EXPIRED. THIS CASE WAS CONTINUED FROM THE SEPTEMBER 26, 2005 MEETING. SECTIONS 30-4-3.3 & 30-4-3.4, PRESENT ZONING-CD-PDI, BS-76, CROSS STREET-SPRING GARDEN STREET. (WITHDRAWN)

This item was withdrawn at beginning of meeting since the violation had been cured.

(B BOA-05-40: 3608-B WEST WENDOVER AVENUE - VENUS THE UNIQUE BOUTIQUE INC. APPEALS A NOTICE OF VIOLATION IN REFERENCE TO THE USE OF THE PROPERTY FOR A SEXUALLY ORIENTED BUSINESS. THIS CASE WAS CONTINUED FROM THE SEPTEMBER 26, AND OCTOBER 24, 2005 MEETINGS. THE PREVIOUSLY DESCRIBED SECTIONS WERE AS FOLLOWS: SECTIONS 30-5-2.7(3)(A)(B), 30-5-2.73.5(A)(1), AND CONDITIONAL DISTRICT HB #2952. THE CORRECTED SECTIONS ARE AS FOLLOWS: SECTION 30-5-2.73.5(B)(2), 30-3-13 (F), 30-8-1.3, 30-8-1.4, AND CONDITIONAL DISTRICT-HIGHWAY BUSINESS #2952, PRESENT ZONING-CD-HB, BS-115, CROSS STREET-CAMANN STREET. (DENIED)

Mr. Ruska said GAB was the owner of a building located at 3608 West Wendover Avenue at the intersection of West Wendover Avenue and Camann Street. Venus the Unique Boutique is one of the two tenants operating a business at this location. The applicants were issued a Notice of Violation on August 15, 2005 for operating a sexually oriented business that is prohibited at this location. On August 19, 2005 the Zoning Office received an appeal of this Notice of Violation from Edward Segler, Attorney for the Lingerie Shop of North Carolina, Inc. d/b/a Venus the Unique Boutique. On or about July 15, 2005 the applicant applied for a business license for an adult business (sexually oriented business). The license was denied because of three reasons, which he cited and explained the prevailing ordinances. He referred to the Conditional District rezoning file copy that each Board member had. He referred to the fact sheet given the Board members and reiterated the facts. Each Board member had a handout that was a photocopy of the definitions section of the Development Ordinance that defines adult bookstore or adult video store.

Barry Levine, City of Greensboro Zoning Enforcement, previously sworn or affirmed, gave the Board members a verbal virtual tour of the business starting at the front door.

Seth Cohen, Esq., 101 South Elm Street, previously sworn, represents the appellant. He said he would like to cross-examine the witness. Mr. Cohen asked questions that Inspector Levine answered. He also asked questions concerning the principal business purpose that was responded to by both Mr. Ruska and Mr. Levine.

Mr. Cohen said he had two arguments. One, this ordinance is unconstitutional under the First Amendment of the United States Constitution, Article I, Section 14 of the Constitution of North Carolina. It is unconstitutional on two grounds. First, it is over-broad, which is called "it is void for vagueness." There is a case that came out of this Board called Fantasy World, Inc, v. Greensboro Board of Adjustment, 162 NC App at 603, it is a 2004 case. It says that licensing schemes directed at sexually oriented businesses engaged in protecting expressive activity pose special problems because of the risk of censorship. Therefore, your ordinance has to be tightly drawn to give standards and define the terms. It is undisputed the key term in this ordinance "principal business purpose" is undefined. It is not in the statutes, it's not in the ordinance; and it is nowhere. It is up to the discretion of the individual Zoning Officer and his superior to define that word. This ordinance is also unconstitutional. It is a tangential argument similar because if the decision-maker has unbridled discretion then the ordinance is unconstitutional under the First Amendment. There is another case, it's another Fantasy World v. Greensboro Board of Adjustment from 1998, 128 NC App. 703, which spells out that if there is unbridled discretion of the decision-maker, then the ordinance is unconstitutional. It is undisputed here that there is unbridled discretion. There is nothing in the ordinance that defines it. There is nothing written down anywhere that defined the

"principal business purpose." In fact, if you look at Webster's, if you take the time as he did, it says "the main one." It is the one. You cannot have more than one principal business purpose. It is logically inconsistent.

There was then a long and involved discussion between Mr. Cohen and the Board members as to the definition of "primary business purpose."

Chair Holston asked Counsel Carr for any thoughts on the question of constitutionality, overly broad tangential?

Counsel Carr said the City's action was upheld by the Court of Appeals in both of those Fantasy World cases and both arguments were made to the Court. She said equally the term "primary business purpose" was not addressed by the Fantasy World Court.

Mr. Cohen said what they did on other grounds is irrelevant. He had a very specific narrow argument that the term "principal business purpose" is the constitutional flaw.

Ms. Buffington said to Mr. Ruska that one of the violations was 30-5-2.73.5, is that correct? Mr. Ruska responded that that was correct. She said she might be misreading this, but it said, "Sexually oriented business (principal or accessory use)..." Mr. Ruska said that was correct and he was glad she picked up on that.

Mr. Cohen commented that that was not in the definitions section. If you go to your definition section, which is what defines what is and is not a sexually oriented business, which is directly on point here. It is the more narrow of the two ordinances and he believed that was what a Court was going to look at because that 30-2-2.7 under "Sexually Oriented Business" gives you the definition and that accessory use is not in there.

When asked if he had access to the gross sales figures, he said he did not have those. He said the Board or City staff had the opportunities to subpoena them and to subpoena the manager. So the manager is not here. He said he understood what the Board member was saying, but generally in a court the party with the burden has the burden to bring forth the evidence. They didn't bring forth the evidence.

Mr. Parmele said he was wondering if the sales of the sexually oriented materials were less than 50 percent, why Mr. Cohen would not have had those with him. Mr. Cohen responded that he did not have the numbers.

Mr. Cohen asked Mr. Levine if he had viewed any of the videos? Mr. Levine said, he did not. Mr. Cohen said Mr. Levine did not know whether those videos were sexually oriented or not; he didn't have first-hand knowledge of that? Mr. Levine said he did not view them. He could not tell him whether they were or not. He was going by the display cases. He did not purchase any of them and look at them.

Mr. Cohen said he wanted to add that for the record that those videos are never viewed as far as they know. Mr. Levine said he had not viewed them either and he did not know what was on the videos.

Ms. Anderson asked if the question was whether or not it is the principal business? Whether it is distasteful to us or not, that is not the question that we are answering. That is not what we are looking at. We are looking at, is it the principal business in that building?

Mr. Pinto said they were looking at whether it was one of the principal purposes of the business.

Ms. Anderson asked how were they getting into two different readings here?

Mr. Ruska said the ordinance gives the definition of "adult book store" or "adult video store" and it says, "which as one of its principal business purposes offers for sale or rental for any form of consideration any one or more of the following..." Then it gives a listing of books, videos, instruments, devices and paraphernalia.

Mr. Cohen said that is true, but to repeat what he had said, if you look up the word "principal" it is the main one and is the whole purpose of these constitutional arguments and these are serious arguments. The City Council could have drafted an ordinance that was very specific. In fact, if you look at the State ordinance, there is a definition in the State statute for criminal purposes. It said, "if 50 percent or more of gross revenues," then it is a sexually oriented business. You can pass an ordinance that is easily understood. The issue is the term "one of its principal business purposes." "One," is that logically consistent and can you have more than one? And even if you can, what does that mean? It is up to the total, complete unbridled discretion of these unelected people who are doing their jobs but they have absolutely zero guidance. They go out there and they determine: "Yes, this is," or "No, it isn't." He did not think that was constitutional.

There was a discussion as to how principal business purpose could be determined. Mr. Levine described the interior of the 6,000 square feet of space and how the various merchandise was displayed. There was one door on which there was a sign that no one under 18 years of age was permitted to enter. Behind that door were the sexually oriented items. Sales were handled by a cash register in that room. There was another cash register for merchandise sold in the front of the business.

Chair Holston closed the public hearing.

A discussion was held among the Board members as to whether the Board had the jurisdiction of deciding the constitutionality of an ordinance or a phrase in the ordinance.

Mr. Cross said he felt the charge to this Board was to decide whether or not there was a violation of this ordinance. Then they can go to the Superior Court and argue the constitutionality, if that's the problem. He said he did not buy the "gross revenues" argument and gave his reasons for that position. He said the fact that one-third of the floor space was separated by a door and behind that door there was only sexually oriented merchandise, he had no problem finding that this is a violation of this statute. The statute also says "principal or accessory use." Clearly, this is more than an accessory use.

Ms. Buffington moved that the Zoning Enforcement Officer be upheld and that the appeal not be granted. Mr. Pinto seconded the motion. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

NEW BUSINESS

VARIANCE

(A) BOA-05-46: 908 DOVER ROAD - JAMES & DEBORAH ADAMS REQUEST A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. *VIOLATION:* A PROPOSED ATTACHED GARAGE AND HOUSE ADDITION WILL ENCROACH 2.6 FEET INTO A 10-FOOT SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RS-12, BS-10, CROSS STREET-HAMMEL ROAD. (GRANTED)

Mr. Ruska said James and Deborah Adams are the owners of a parcel at 908 Dover Road. The lot contains a single family dwelling. The applicant is proposing to add a garage/den/kitchen/laundry/living area to the side of the dwelling. The addition will encroach 2.6 feet into a 10-foot side setback requirement.

Chair Holston opened the public hearing.

Marc Isaacson, Esq., 101 West Friendly Avenue, previously sworn or affirmed, presented materials for the Board's consideration. He said he did not believe that the square footage of the house was 7,000 square feet. He checked with the owner and there are 711 square feet in a finished basement and about 2,800 feet on the main floor, which would give it about 3,211 square feet of finished space. He had an appraisal that would confirm that.

Mr. Isaacson said he represented the new owners of the property, Kenneth and Patricia Brooks. They recently bought this property from Mr. and Mrs. Adams. They plan on making certain improvements to this property, including a garage and some additional kitchen and laundry area. He then went through the booklet given the Board members. He pointed out three notarized letters from adjoining property owners who are all supporting this variance application.

Mr. Isaacson then discussed the factors for the granting of the variance and answered questions posed by Board members.

There was no one present to speak in opposition to this request. Chair Holston closed the public hearing.

A brief discussion ensued among the Board members as to the merits of this request.

Mr. Pinto said in BOA-05-46, 908 Dover Road, the home now of Kenneth and Patricia Brooks, based on the stated findings of fact, which are incorporated herein by reference, he moved that the variance be granted based on the following in addition to the findings of fact that were incorporated. There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the ordinance is upheld, then there is evidence that an addition would need to go onto the back of the home and would cause problems, both with killing trees that are on the property and a lot of backfill that would need to be put in because the lot slopes away from the house toward the rear of the property. There is also evidence that the neighbors around this property consent to the variance being allowed. Those are also the unique circumstances that would argue for granting the variance. The hardship is not of the making of the property owners; the property is what it is. It does not currently have a garage. He thought a reasonable use is to add a garage that is in keeping with the other homes in the neighborhood. The variance is in harmony with the general purpose and intent of the ordinance. It preserves its spirit. It allows this home to be

updated. This is an area where the homes are generally 50 years old and older and it is an appropriate use of our power to make sure that homes are updated, both for resale and for the value of the property overall. The addition that is proposed appears to be well thought out and will make this house look like other homes in the neighborhood so it won't stand out. The granting of the variance assures the public safety and welfare and does substantial justice because other similar variances have been granted and he was not sure that there are any public safety issues involved with putting this garage on the side of the home. Mr. Parmele seconded the motion. The Board voted 6-1 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Kee, Parmele, Pinto. Nays: Cross.)

(B) BOA-05-47: 608 SOUTH HOLDEN ROAD - DOUGLAS AND DARLENE WEGNER REQUEST VARIANCES FROM AN INTERIOR SETBACK REQUIREMENT. *VIOLATION #1:* A PROPOSED STORAGE ENCLOSURE FOR A HOT WATER HEATER ATTACHED TO A MULTIFAMILY BUILDING WILL ENCROACH 4 FEET INTO AN 18.6 FOOT INTERIOR SETBACK. THE ENCLOSURE WILL BE 14.6 FEET FROM THE PROPERTY LINE. TABLE 30-4-6-4 (FOOTNOTE B). *VIOLATION #2:* A PROPOSED DECK ATTACHED TO THE MULTIFAMILY UNIT WILL ENCROACH 12.5 FEET INTO AN 18.6 FOOT INTERIOR SETBACK. THE DECK WILL BE 6.1 FEET FROM THE PROPERTY LINE. TABLE 30-4-6-4 (FOOTNOTE B).PRESENT ZONING-RM-12, BS-45, CROSS STREET-ASHLAND DRIVE. (CONTINUED)

Mr. Ruska said Douglas and Darlene Wegner are the owners of a parcel located at 608 South Holden Road. The parcel contains six multifamily units. According to tax records, the units were constructed in 1960. The applicant is proposing to add a three-foot by three-foot hot water enclosure behind one of the units. The enclosure will encroach four feet into an 18.6-foot interior setback. The applicant is also proposing to attach a 12-foot by 12-foot deck adjacent to the same unit. The deck will encroach 12.5-feet into the 18.6-foot interior setback. The lot is rectangular shaped. It is approximately 100 feet wide by 300 deep. On the Multifamily Dimensional Table, Table 30-4-6-5, Footnote B states: On lots less than 120 feet in width at any potential building locations, the minimum interior side setbacks shall be 10 feet or 20 percent of the length of the building facade facing the property line, whichever is greater. The building facade is 93 feet in length. Twenty percent of 93 feet is 18.6 feet, which becomes the required setback instead of the typical 20-foot interior setback. Thus the variance request is from an 18.6-foot minimum setback.

Chair Holston opened the public hearing.

Doug Wegner, 7602 Wellingford Grade, previously sworn or affirmed, presented handouts for the Board's consideration. Mr. Wegner went through the handout, explaining its contents and why he needs the changes proposed. He owns the six units and eventually all the hot water units will need to be changed. Some will not require a variance, but he thought there was one other unit for which he will need a variance. He needs to place the deck so that it does not interfere with the privacy of the units beside it. The proposed deck is 12 by 12, but the steps might have to be moved back inward so he will not be in violation with the overhead lines.

Mr. Ruska stated that for that number of units, if Mr. Wegner did increase the size of the building, he would have to pave the parking lot. But what he would not be subject to with that number of units is required landscaping.

Mr. Kee agreed with Mr. Pinto in that he would like to see a sketch of what the entire property would look like and this would certainly aid the Board. It appears he will have to come back several times to get other variances.

There was a general discussion concerning the size of the water heaters and size and shape of the decks.

Mr. Ruska said this could not come back to the Board at the next meeting, which would be the third Monday of December. The deadline for that meeting has already passed, as far as a new request. So if this matter were continued, it would have to be to the fourth Monday in January or beyond. He said what the Board was asking for was all the variances that would be involved, all the dimensional encroachments involved so they could see those all at one time.

Mr. Cross said if they denied the variance today, there was nothing to prohibit him from applying for a variance again.

Mr. Ruska said technically if the Board denied this variance, he has had his one bite at the apple on this particular unit. He said if the Board was thinking about looking at an overall plan with multiple variances, do not deny this one because you may penalize him on this particular item.

Chair Holston asked if there was anyone present to speak in opposition to this request and no one came forward. He then closed the public hearing.

Ms. Anderson moved in BOA-05-47, 608 South Holden Road, that the matter be continued for 90 days. Ms. Buffington seconded the motion. The Board voted 5-2 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Kee, Parmele. Nays: Cross, Pinto.)

Chair Holston declared a five-minute break.

(C) BOA-05-48: 608 SOUTH HOLDEN ROAD - DOUGLAS AND DARLENE WEGNER REQUEST A VARIANCE FROM THE MAXIMUM FENCE HEIGHT REQUIREMENT. *VIOLATION:* A PROPOSED PRIVACY WALL/FENCE WILL EXCEED THE MAXIMUM HEIGHT OF 7 FEET BY 2.6 FEET. SECTION 30-4-9.6(A), PRESENT ZONING RM-12, BS-45, CROSS STREET-ASHLAND DRIVE. (CONTINUED)

Mr. Cross moved that BOA-05-48, 608 Holden Road, be continued for 90 days to match with BOA-05-47. Mr. Parmele seconded the motion.

Chair Holston asked if there was anyone who wished to speak in opposition to the continuance and no one came forward.

The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

(D) BOA-05-49: 501 NORTH EUGENE STREET - STEVE JONES REQUESTS VARIANCES FROM THE MINIMUM REQUIRED STREET SETBACK FROM MAJOR THOROUGHFARES WHICH IS ZERO LOT LINE OR 45 FEET FROM THE CENTERLINE (WHICHEVER IS GREATER). *VIOLATION #1:* A PROPOSED BUILDING WILL

ENCROACH 26.7 FEET INTO A REQUIRED 45-FOOT SETBACK FROM THE CENTERLINE OF NORTH EUGENE STREET; THUS THE FACE OF THE BUILDING WILL BE ZERO LOT LINE. TABLE 30-4-6-5. *VIOLATION #2:* THE SAME BUILDING WILL ENCROACH 26.7 FEET INTO A REQUIRED 45-FOOT SETBACK FROM THE CENTERLINE OF BATTLEGROUND AVENUE; THUS THE FACE OF THE BUILDING WILL BE ZERO LOT LINE. TABLE 30-4-6-5. PRESENT ZONING-CB, BS-2, CROSS STREET-NORTH EUGENE STREET. (GRANTED)

Mr. Ruska said Steve Jones was the owner of a parcel located at 501 North Eugene Street. The applicant is proposing to construct a multifamily building, which will encroach 26.7 feet into a 45-foot centerline setback from North Edgeworth Street and 26.7 feet into a 45-foot setback from Battleground Avenue. The major thoroughfare street setback requirements are 0 lot line or 45 feet from the centerline, whichever is greater. Thus the building walls will be 0 lot line. The building will also encroach into the right-of-way. However, the Board of Adjustment may not grant encroachments into the public rights-of-way. The right-of-way encroachments will be decided by City Council. The lot is surrounded by four streets, Battleground Avenue, North Edgeworth Street, West Smith Street and North Eugene Street. They are all classified as major thoroughfares.

Chair Holston opened the public hearing.

Jim Jones, 3917 Brass Cannon Court, previously sworn or affirmed, said he was a partner with his brother, Steve Jones, in Bellemeade Development. They own the old North State Chevrolet property in the CB District where the dealership had operated for 53 years. To place their plans in context, for the past 18 months they had been creating the plans on this property for Bellemeade Village. It will be a mixed-use residential community of urban mid-rise buildings so this is a project type that has not been done in this scale in Greensboro before. The project follows the Center City Development Plan that was commissioned a few years ago. In that proposal, this area is in the Bellemeade District and they have followed it as they worked on their development. They held a design charrette in February 2005 to engage City staff and the neighborhoods around them. They were very positive and saw this as a buffer between them and Downtown.

City Council voted to fund relocating storm sewers and upgrading those storm sewer lines that run through their property so that they can begin construction. They plan to take about 6.5 acres that are now blacktopped parking lots and turn that into a community where they will have hundreds of new residents living, working and playing in exactly the kind of development that the City is trying to attract. Their first building should generate approximately $14 million in new tax base.

He introduced Mark Fisharo with F&K Architects, who will explain to the Board exactly what they are looking for as they develop this Downtown urban block.

Mark Fisharo, 220 North Tryon Street, Suite 400, Charlotte, previously sworn or affirmed, said he was the managing principal with F&K Architects in Charlotte. He presented the design for the elevation that faces Edgeworth. Consistent with the Master Plan, they were trying to maintain streetscapes and reconnect some of the City's grid. Specifically Wharton Street is planned to be extended through this site, bisecting the existing car dealership down to Smith Street. He continued to explain their plans and reasons for the variance. In order to make the development work, they need to build up to their property line. The property effectively parallels Edgeworth, but Edgeworth is not straight. So there is a point where the building will be built right on the property line. If they move back off of that property line, it causes a domino effect. Therein lies the issue. However, the

ordinance says the setback requirement is the property line or 45 feet from the centerline of pavement of a major thoroughfare. They have had discussions with GDOT and there are no plans for widening any of these streets. If the variances are granted, it will still allow for a reasonable sidewalk and pedestrian friendly activities. The development will not work, given the site constraints, if they do not get relief from the 45-foot centerline setback. GDOT visited the site and determined that while they are in the site triangle, that it is a problem that can be overcome with re-signaling of the intersection. For the record, he submitted a copy of the Cooper-Cary Master Plan. All this development effectively ties in to the new baseball stadium across Smith Street ultimately.

Mr. Ruska said there was one thing he needed to share with the Board. The double setback in the Downtown area in the CB District is almost certainly going to disappear when they go to their new land development ordinance. They have already told the consultants that as far as the Downtown is concerned, they want to encourage zero lot line building and not have a penalty for having that other setback from the right-of-way line, whichever is greater. That standard has not changed and that is what they are asking for the variance from to be zero lot line.

There was a general discussion during which Mr. Fisharo and Mr. Jones answered some questions as to time line, etc.

There was no one present to speak in opposition to the request. Chair Holston closed the public hearing.

Mr. Cross said in BOA-05-49, 501 North Eugene Street, he moved that the Zoning Administrator's findings of fact be incorporated into the record by reference and he moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance because if the applicant complies with the provisions of the ordinance the applicant can make no reasonable use of his property due to the fact that it is located in the Downtown CB District across the street from the baseball stadium where the City's purposes are high density. In fact it has already been testified that the City is going to try and change the very ordinance for which they seeking a variance. Also the property is surrounded by four major thoroughfares, making the property unique. The hardship of which the applicant complains results from the unique circumstances related to the property because of the four major thoroughfares and the shape of the lot. The hardship also results from the application of this ordinance to the property because of the two setbacks that are defining the building envelope. The hardship is not the result of the applicant's own actions because obviously the thoroughfares have been existing along there; in fact, the baseball stadium has been built since the applicant has owned this property. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because of the dense nature of residential use in the Downtown area and the new focus on the Bellemeade redevelopment. The granting of the variance assures the public safety and welfare and does substantial justice because, as testified, there will not be any major problem with traffic visibility and this is the type of project that we want to encourage in the City of Greensboro in the Downtown. Ms. Buffington seconded the motion. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

SPECIAL EXCEPTION

(A) BOA-05-50: 408 ANDREW STREET - DAVID AND ELLEN BLACK REQUEST A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-5-2.37(B) TO ALLOW A SEPARATION OF 1,220 FEET FROM ONE FAMILY CARE HOME (6 OR LESS PERSONS) TO ANOTHER FAMILY CARE HOME (6 OR LESS PERSONS) WHEN 1,320 FEET IS REQUIRED. PRESENT ZONING-RS-7, BS-19, CROSS STREET-CALDWELL STREET. (GRANTED)

Counsel Carr reminded the Board that this was not a variance, it is a Special Exception. So a reasonable use of the property issue is no longer for consideration.

Mr. Ruska said David and Ellen Black are the owners of the property located a 408 Andrew Street, which contains a single family dwelling. The applicant is requesting a Special Exception, as authorized by Section 30-5-2.37(B) to locate a proposed family care home of six or less persons 1,220 from an existing family care home of six or less persons, instead of the required spacing of 1,320. his location will not meet the spacing requirement by approximately 100 feet. This measurement is established from property line to property line. The existing family care home is located at 618 Broad Street, which is located north and east of the proposed family care home. The homes will be separated by a major thoroughfare, Martin Luther King, Jr. Drive, other single family homes and a multifamily building. Attached to your copy of the fact sheet is a copy of the updated report for Board of Adjustment's Special Exception requests for family care home from January 2000 through October of 2005. The adjacent properties are also zoned RS-7.

Chair Holston opened the public hearing.

David and Ellen Black, 102 Burroughs Road, Jamestown, were sworn in. Mr. Black said they opened the family care home at 618 Broad Street. They specialize in Level III youth at-risk, which in laymen's terms means they take the youths that are at the highest level prior to going to training school. They get the youths directly out of jail or detention. After operating 618 Broad Street for about three years they were approached by the group home at 408 Andrew, which was Cornucopia House, which was also a Level III home. They went through all the steps to have the license changed to their name, had the zoning approved and thought they had all the documents in hand to open the 408 Andrew home. The State placed a moratorium on new group homes. In July, the State contacted them and said the moratorium was still in place. However, because of their success with the youths they had, the State had decided to let them license 408 Andrew. They were then advised of the distance between homes requirement and it was suggested they might apply to the Board of Adjustment for a Special Exception. They still operate the facility at 618 Broad Street. Their facilities are staffed 24 hours a day. They have also started a Boy Scout Troop through the New Zion Baptist Church on Martin Luther King, Jr. Drive and have been active in the communities in which their group homes are located.

There was no one present to speak in opposition to this request. Chair Holston closed the public hearing.

Mr. Cross said in BOA-05-50, 408 Andrew Street, he moved that the Zoning Administrator's findings of fact be incorporated into the record by reference and that based upon such finding of fact that the Special Exception be granted based on the fact that the Special Exception would be in harmony with the general purpose and intent of the ordinance and preserves its spirit since we are only talking about 100 feet. There is a major thoroughfare and several single family residences, as

well as a multifamily building, separating the group homes. It assures public safety and welfare and does substantial justice with the intent of this type of ordinance and in actuality it will benefit the community based on their testimony today. It also does substantial justice in the sense that the applicants really did their homework and came to the City and it sounds like they may have gotten some bad information at first. It seems to be such a close call that not everybody caught it the first time around. Mr. Pinto seconded the motion. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

APPEAL OF NOTICE OF VIOLATION

(A) BOA-05-51: 705 BATTLEGROUND AVENUE - KATHY STERLING APPEALS A NOTICE OF VIOLATION IN REFERENCE TO A CANOPY SIGN THAT EXCEEDS THE ALLOWABLE MAXIMUM SQUARE FOOTAGE. BASED ON 25% COVERAGE, THE CANOPY IS ALLOWED 70 SQUARE FEET OF SIGNAGE AND THE CANOPY CONTAINS APPROXIMATELY 250 SQUARE FEET. TABLE 30-5-5-3, PRESENT ZONING-CD-GB, BS-2, CROSS STREET-W. FISHER AVENUE. (APPEAL DENIED - 90 DAYS FOR ABATEMENT)

Mr. Ruska said Kathy Sterling is the owner of the business located a 705 Battleground Avenue, which contains Dog Days Day Camp. The applicant has placed new signage on an awning that exceeds the allowable 25 percent awning coverage. The application was issued a Notice of Violation on October 7, 2005. On October 21, 2005 the applicant appealed the Notice of Violation. The specifications for accessory attached signs requiring a permit are found in Table 30-5-5-3. The specifications are that signage may not exceed the top of the canopy and may not exceed 25 percent of the canopy or awning face. The canopy is 279 square feet and is allowed to contain 68 square feet of signage. The applicant did not apply for a sign permit. If a sign permit had been applied for, the applicant would have been advised at that time that the signage on the awning was not in compliance.

Mr. Ruska noted that this did not involve a variance, but is an appeal. The Board is not authorized to grant a variance to the number, size, illumination or spacing provisions of signs.

Chair Holston opened the public hearing.

Kathy Sterling, 1445 Highway 150, Summerfield, NC, previously sworn or affirmed, said she had some pictures and presented them to the Board for consideration. She explained what the pictures were showing. She thought the building that they rented had a few unique circumstances, which she explained. They did not get a permit because they understood if they used the existing structure and they painted it, that they did not have to have a permit. As renters, they were not advised that this was considered to be an awning or canopy. She said they would request some extra time to look this over and maybe redo it down the road. They had painted over something that was already there, which was for an antique gallery or consignment gallery. She said Calvin Pendleton, Pendleton Signs, did the painting and he has been painting signs for about 40 years. He didn't realize that it was considered to be a canopy.

Mr. Ruska explained that if it had been a wall sign, being in the GB District, they would have been limited to 10 percent of the wall area for a sign. However, this is not a wall sign, it is a canopy sign.

Counsel Carr said the Board was hearing an appeal; they were not hearing a request for a variance or a Special Exception. She said she thought it is in the Board's discretion to find a violation and set a time for abatement or the Board could leave that to the discretion of staff. But she did think it was in the Board's purview to set a reasonable time for abatement.

Mr. Ruska said a typical time for abatement was 30 days, but they do work with people when the situation warrants.

Counsel Carr said the Board would be exercising its power to find the violation, but then you are simply saying, we believe as a Board that an appropriate abatement time is "x," given the circumstances.

Mr. Cross said the Board could grant 90 days and during that time frame Ms. Sterling could work it out.

There was no one present to speak in opposition to the appeal. Chair Holston closed the public hearing.

Mr. Pinto said in BOA-05-51, 705 Battleground Avenue, based on the stated findings of fact, he moved that the Zoning Enforcement Officer be upheld and that the appeal be denied. As a condition to that denial, it is this Board's opinion that the appellant receive a 90-day abatement period within which to come into compliance. Mr. Cross seconded the motion. The Board voted 7-0 in favor of the motion. (Ayes: Holston, Anderson, Buffington, Cross, Kee, Parmele, Pinto. Nays: None.)

Chair Holston said they were going to close a brief chapter for the Board of Adjustment. He congratulated Ms. Anderson on her win for a seat on the City Council. He said the Board would miss her, but she wouldn't be far away and she would be taking care of them as citizens and residents of Greensboro.

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There being no further business before the Board, the meeting was adjourned at 5:05 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

HH/ts.ps.